

1 NICOLA T. HANNA
United States Attorney
2 DAVID M. HARRIS
Assistant United States Attorney
3 Chief, Civil Division
JOANNE S. OSINOFF
4 Assistant United States Attorney
Chief, General Civil Section
5 DANIEL O. BLAU (Cal. Bar No. 305008)
Assistant United States Attorney
6 Federal Building, Suite 7516
300 North Los Angeles Street
7 Los Angeles, California 90012
Telephone: (213) 894-0165
8 Facsimile: (213) 894-7819
E-mail: Daniel.Blau@usdoj.gov

9 Attorneys for Federal Defendant

10
11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 EASTERN DIVISION

14 Innovative Nutraceuticals, LLC,
15 Plaintiff,
16 v.
17 United States of America,
18 Defendant.

No. 5:18-cv-01400-JGB-SHK

FEDERAL DEFENDANT'S EX PARTE
APPLICATION FOR A STAY OF THE
ENTIRE CASE DUE TO THE LAPSE OF
APPROPRIATIONS; DECLARATION OF
DANIEL O. BLAU

[Local Rule 7-19]

Honorable Jesus G. Bernal

1 Undersigned counsel, on behalf of Federal Defendant, apply *ex parte* for an order
2 staying the entire case due to the lapse of appropriations.

3 1. At the end of the day on December 21, 2018, the appropriations act that had
4 been funding the Department of Justice (“Department”), of which the U.S. Attorney’s
5 Office is a component, expired; the expiration resulted in a lapse of appropriations to the
6 Department. The Department does not know when funding will be restored by
7 Congress.

8 2. Absent an appropriation, Department attorneys are prohibited from
9 working, even on a voluntary basis, except in limited circumstances, such as
10 “emergencies involving the safety of human life or the protection of property.” 31
11 U.S.C. § 1342.

12 3. Undersigned counsel for the Department of Justice therefore requests a stay
13 of the entire case until Congress has restored appropriations to the Department.

14 4. Pursuant to Local Rule 7-19.1, notice of this *Ex Parte* Application was
15 given to plaintiff’s counsel (Eric Honig, Michael Chernis, and Paul Gabbert) by email on
16 December 26, 2018. On December 26, 2018, Mr. Gabbert responded by email, stating
17 that Plaintiff’s counsel does not oppose the Federal Defendant’s *Ex Parte* Application,
18 subject to certain understandings. See Exhibit 1 to Declaration of Daniel Blau.

19 Therefore, although the United States greatly regrets any disruption caused to the
20 Court and the other litigants, the Federal Defendant hereby moves for a stay of the entire
21 case due to the lapse in appropriations until Department attorneys are permitted to

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 resume their usual civil litigation functions.

2 Dated: December 27, 2018

Respectfully submitted,

3 NICOLA T. HANNA
United States Attorney

4 DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division

5 JOANNE S. OSINOFF
Assistant United States Attorney
Chief, General Civil Section

6
7
8
9 /s/

10 DANIEL O. BLAU
Assistant United States Attorney

11 Attorneys for Federal Defendant
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF DANIEL O. BLAU

I, Daniel O. Blau, do hereby declare and state as follows:

1. I am an Assistant United States Attorney in the Central District of California. I make the following factual statements based on my personal knowledge. If called as a witness, I could and would competently testify thereto.

2. On December 26, 2018, I notified plaintiff's counsel of this ex parte application by email.

3. On December 26, 2018, plaintiff's counsel Paul Gabbert responded and stated that Plaintiff's counsel did not oppose this ex parte application subject to certain understandings.

4. A true and correct copy of this email correspondence is attached hereto as Exhibit 1.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of December, 2018, at Los Angeles, California.

/s/

Daniel O. Blau